IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

RSA.No. 15 of 2007()

AS.106/2001 of ADDL.DISTRICT COURT-I,MAVELIKKARA
OS.400/1997 of MUNSIFF COURT,CHENGANNUR

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APPELLANT/APPELLANT/PLAINTIFF:

K.SIVARAMA PILLAI, PONVELI VEETTIL,
KUTTEMPEROR MURI, MANNAR VILLAGE,
ALLEPPY DIST.

BY ADV. SRI.S.ARUN RAJ
SRI.P.DANIEL

RESPONDENT/RESPONDENT/DEFENDANT:

SARASWATHY AMMA ALIAS SARASAMMA,
THOPIL PUTHENVEEDU, CHINGOLIMURI,
CHINGOLI VILLAGE, KARTHIKAPALLY TALUK.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 19/01/2007,

THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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R.S.A.No. 15 OF 2007-B

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Dated this the 19th day of January, 2007.

JUDGMENT

This appeal is by the plaintiff. He sued the defendant for a declaration that he has perfect title to the suit property by adverse possession. Defendant is the divorced wife of the plaintiff. In the matrimony, they had three children. Thereafter, in 1983, it appears that the couple fell apart leading to the wife leaving the matrimonial home. In 1986, the competent court granted a decree of divorce to the respondent. Along with the second appeal, the appellant-plaintiff has produced a copy of the petition filed by the defendant-wife during the proceedings before the matrimonial court. It contains a positive averment by her that in 1983, when she took exception to his illegal relationship with another woman and to his habitual alcoholism, she was beaten up and she and her children had to flee from the matrimonial

home and that they were not cared for thereafter by the plaintiff. In the suit from which this appeal arises, the defendant had contended that the plaintiff has yet another child in the woman to whom she would attribute adultery.

2. It is in the backdrop of the aforesaid facts that we have to examine the assertion of the plaintiff-husband that he had perfect title by adverse possession against an item of property which stands in the name of the divorced wife. According to him, it was he who spent funds for acquiring the said property in the name of the wife and that he had been in management of the property and was also having the title deed of the property. The records would disclose that the parties were living cordially to start with and they had three children. In the social set up of the State of Kerala, the holding of the title document by the husband cannot be treated as an act of possession by him as against the interest of the wife. Even if he continues to hold such title deed after the wife left the matrimonial home, having regard to the facts and circumstances of the case, I am not inclined to take the view that by such holding of the title document, he was

demonstrating a hostile animus to the title of the wife. That apart, as rightly noticed by the courts below, the divorce proceedings terminated only in 1986. The ground of desertion was found as against the wife. This does not necessarily mean that she had abandoned the property which belonged to her and the husband, eo-instandi her going out of the home, picked up a hostile animus and thereafter, held the property adverse to the interest of the wife. Not only that, even if the property stands in the name of the wife, the courts have rightly taken note of the fact that the couple had three children. There is not even a shred of legal evidence either between the legal evidence or otherwise to hold or even legally infer that the husband had ever intended to hold the plaint schedule property as against the defendant-wife.

Having heard the learned counsel for the plaintiff and having regard to the facts and circumstances, I do not find any error of law being committed by the courts below. The judgments of the courts below would show that the entire materials on record, including the depositions of the witnesses on behalf of the plaintiff and the depositions of the witnesses

on behalf of the defendant have been properly appreciated and the findings entered into by the courts below cannot be treated as perverse, as regards the appreciation of evidence. The second appeal fails and hence, the same is dismissed in limine.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-